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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,974	12/14/2005	Shigeki Ueda	NGB-39208	9587

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PEARNE & GORDON LLP  
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CLEVELAND, OH 44114-3108

EXAMINER
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YOUNKINS, KAREN L

ART UNIT	PAPER NUMBER
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3751

NOTIFICATION DATE	DELIVERY MODE
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03/31/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patdocket@pearne.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/560,974	<b>Applicant(s)</b> UEDA ET AL.	
	<b>Examiner</b> KAREN YOUNKINS	<b>Art Unit</b> 3751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11/30/2009 (restriction response).
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 1-15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/14/2005, 9/16/2008</u> .                                   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed 12/14/2005 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. Copies of JP 5-91955, JP 8-282358, and JP 2734832 have not been provided.

### ***Election/Restrictions***

1. Claims 1-15 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 11/30/2009.

### ***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

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3. The abstract of the disclosure is objected to because the abstract is not limited to a single paragraph, and uses legal phraseology such as “means”. Correction is required. See MPEP § 608.01(b).

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

5. A substitute specification in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b) is required. The substitute specification filed must be accompanied by a statement that it contains no new matter. The specification appears to be a direct translation to English from a foreign language and is difficult to understand in the current state.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 16-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

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9. The claims are replete with limitations lacking proper antecedent basis.

Examples include: Claims 16 and 17 recite the limitation "the case comprising the upper lid and the base plate" in page 5. Claim 18 recites the limitations "the motion information" and "the biologic information" in page 6. Claim 20 recites the limitation "the pressing means" in page 6. Claim 21 recites the limitation "the cord-like face arranged in the case". There is insufficient antecedent basis for this limitation in the claim.

10. Claim 17 appears to be incorrectly independent. Currently claim 17 line 3 states "apparatus according to at the case". The examiner believes this line should read "apparatus according to claim 16 at the case". For the purposes of examination, the examiner assumes claim 17 is dependent on independent claim 16.

11. Regarding claim 16, the language "sensor in a code-like shape" renders the claim indefinite. The terms "code" and "code-like" do not appear in the specification, and the examiner is unaware of these terms known in the art to describe a certain shape.

12. Regarding claim 17, it is unclear what sensor shape the applicant intends to claim. Claim 17 requires the sensor in a "cord-like" shape, while claim 16 (from which claim 17 depends) requires the sensor in a "code-like" shape.

13. Regarding claim 18, the phrase "and the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

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14. Regarding claim 19, the language “wherein the piezoelectric sensor in the code-like shape outputs an electric signal in accordance with an acceleration of a vibration when the piezoelectric sensor is applied with the vibration” is unclear.

15. Regarding claim 23, the location of the projections is unclear. Claim 23 states “the projections are arranged alternately to the upper lid and the base plate along a cable longitudinal direction”. This statement does not distinctly claim the projections being located on either of the upper lid or the base plate. Further, it is unclear what “a cable longitudinal direction” is intended to be.

16. Regarding claim 25, the phrase “or the like” renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by “or the like”), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

17. In light of the above, the claims are examined as best understood.

***Claim Rejections - 35 USC § 103***

18. Claims 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the English Translation of JP 2985645 (submitted by the applicant on 10/30/2009, and known hereafter as ‘645) in view of USPN 5,902,255 to Origno.

19. Regarding claims 16-21, and 23, ‘645 teaches a vibration detecting apparatus including a first amplifying means 8 and a vibration detecting sensor (piezoelectric element 1). The vibration detecting apparatus is at a ‘case’ comprising an upper lid and a base plate, for example see figures 7 and 11. ‘645 further teaches controlling means 18 and 19, and the sensor outputs an electric signal in accordance with an ‘acceleration

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of a vibration' after the vibration is applied, see pp [0009] of the detailed description.

The piezoelectric sensor is attached the upper lid (see figure 11) and the case includes 'pressing means' as claimed see the example in pp [0011]. The pressing means projections are arranged alternatively to the upper lid and base plate along a cable longitudinal direction, as they run along the apparatus.

'645 fails to show the vibration detecting apparatus arranged with a toilet seat apparatus. Instead, '645 teaches the vibration detecting apparatus in a variety of other seats, see for example drawing 4.

Origino teaches a similar vibration detecting apparatus disposed on a toilet seat, see column 3 lines 15-16.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the vibration detecting device of '645 in a toilet seat to detect a toilet user as taught by Origino. Regarding the sensor shape, it would have been obvious to one having ordinary skill in the art to have made the sensor in a cord like shape to match the U-shape of a toilet seat. As shown in '645, the sensor extends along a length of the seating surface to properly detect a user. Further, to have made the sensor in a 'code-like' shape would have been obvious to one having ordinary skill in the art as a design choice. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A Change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

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20. All functional implications have been fully considered but do not appear to impose any patentably distinguishing structure over that disclosed by '645 as modified in pp-18 above.

21. Regarding claims 25-26, as previously discussed in pp-19 above, further the electric signal may be used to control many factors such as the interior temperature of the room, sounds, and other indoor amenities. It would therefore also have been obvious to have controlled the temperature of water of cleaning means, a water pressure, or a temperature of a heater, etc. as they are controllable components well known in the art of toilets. During this process, the signal is being outputted to an outside monitor via communicating means to the extent claimed.

22. Regarding claims 22 and 24, as previously discussed in pp-19 above, the embodiment shown in figure 12 teaches an outer face of the upper lid is recessed with a peripheral groove. The pressing means/projections/pads is fitted into the groove attached to a lower face of the base plate and the piezoelectric sensor is arranged to be contained within the pressing means. It is noted that the pressing means is an 'elastic body' to the extent claimed, due to the nature of the pressing means moving and being compressed during normal use of the device. When a user sits on the seat, the pressing means/projections/pads are brought into 'elastic' contact with an upper face of a toilet main body (as the system is on a toilet seat/body). It is noted that the pad is capable of being brought into contact with the sensor by penetrating a through hole of the base plate. This statement does not structurally claim a through hole in the base plate.



***Conclusion***

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent Application Publication No. 2006/0113172 and USPN 5,724,990 teach pressure sensor detecting mechanisms for various seated surfaces.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN YOUNKINS whose telephone number is (571)270-7417. The examiner can normally be reached on Monday through Friday 7:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571)272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. Y./  
Examiner, Art Unit 3751

/Gregory L. Huson/  
Supervisory Patent Examiner, Art  
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